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DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION (EAST)
GOVT. OF NCT OF DELHI
CONVENIENT SHOPPING CENTRE, FIRST FLOOR,
SAINI ENCLAVE, DELHI – 110 092

C.C. No. 46/2019

SH. SANDEEP BHATIA
S/O-SH. SUBHASH CHAND BHATIA
R/O-128, J&K BLOCK, LAXMI NAGAR,
DELHI - 110092

....Complainant

Versus

APPLE STORE
THROUGH ITS MANAGING
DIRECTOR/OFFICER CONCERNED
19TH FLOOR, CONCORDE TOWER C, UB CITY
NO.24, VITTAL MALLYA ROAD,
BANGALORE- 560001,
KARNATAKA
B2X SERVICES SOLUTIONS INDIA PVT. LTD.
THROUGH ITS DIRECTOR,
F-25, 1ST FLOOR, ABOVE KFC,
PREET VIHAR, NEW DELHI – 110092

.....OP1

.....OP2

Date of Institution : 01.02.2019
Judgment Reserved on : 13.07.2023
Judgment Passed on : 17.07.2023

QUORUM:

Sh. S.S. Malhotra (President)
Ms. Rashmi Bansal (Member)
Sh. Ravi Kumar (Member)

Order By: Ms. Rashmi Bansal (Member)

JUDGMENT

The present complaint is filed by the complainant against OP for giving him a defective phone and being deficient in services that have caused him financial loss as well as harassment and mental agony and prayed for a refund of the amount of the product along with compensation and litigation cost with interest.

1. It is the case of the complainant that he purchased one mobile phone, an iPhone 10, from a phone store on 11.07.2018, for Rs.91,000/- against the invoice. Within two months of use, the said phone started showing the problems like no sound from the speaker, the call dropped issues and most of the time non-swiping of the screen. The complainant handed over the above said phone to OP2, who is a Agent/service provider for OP1, for its repair/service on 11.09.2018 against the service job sheet. OP2 returned the said phone to the complainant on 18.09.2018 with the assurance that the problem has been solved i.e. speaker related issue was resolved, all tests passed and the iPhone working fine, however, the same was just an eye wash as the phone again started malfunctioning and again the phone was submitted to OP2 on 24.09.2018 against the job sheet. The OP2 assured the complainant for the complete resolution of his grievances. The complainant further submits that at the time of handing over the phone, it was in working condition except for the issues that have been brought into the

information of OP2 and the same is clear from the job sheet given by the OP2.

2. The complainant submits that he went to the OP2 office to collect his phone on 13.10.2018 and was shocked to see the condition of his phone as the same was in dead condition and he was informed by OP2 that the said iPhone X RC was found damaged and the service of the phone were declined with the remark that the same was not covered under warranty. The OP2 was forcing the complainant to take the phone back, to which he had to call the police as he found himself cheated by OP. When the complainant refused to accept the phone, then the same was kept with OP2 to resolve the issues once again. The complainant sent emails and ran from pillar to post to get his phone issue resolved, however, nothing had happened and the complainant was forced to collect his dead phone under protest.

3. A legal notice dated 12.11.2018 sent to OP remained unanswered. The counsel of the complainant received an email and phone call from the office of the Apple company that assured to resolve the issue but nothing has happened till date.

4. The complainant submits that he purchased the phone for his enjoyment, prestige and comfort and more particularly being impressed by the promotional advertisement regarding its feature and services etc, however, the same turned out to be a nightmare to him as the OP failed on all fronts, making the complainant realize that he has committed a mistake

by purchasing Apple iPhone X. Complainant submits that despite due diligence in pursuing the matter with all the OPs, they failed to settle the issue of the complainant. Instead, the complainant was harassed by the OPs intentionally and deliberately and has committed grave deficiency in providing appropriate services to the complainant, therefore, the complainant prayed for a refund of the amount of the phone, compensation for financial loss as well as harassment and mental agony along with litigation cost and interest thereupon.

5. OP1 has filed its evidence denying the allegations of the complainant stating the complaint is devoid of any merit and liable to be rejected/dismissed by this commission. OP1 submits that the iPhone undergoes a strict quality check to ensure that the said product maintains high standards. It is submitted that OP is a renowned market seller and innovation leader and has been a flag bearer of technological advancement in the telecommunication devices, computing and communication space. OP1 submits that the present complaint is *Mala-fide*, devoid of merit and contradicts the established principle of law. OP1 further submits that when consumers purchases a product and act in complete disregard to the warranty policies of the manufacturer, (in the present case “the Apple warranty”) he cannot claim under the Consumer Protection Act. As per warranty policies of OP1, if there is damage detected by the Apple authorized service centre (AASP) of OP1, then neither a refund nor a

replacement of the handset will be applicable. It is pertinent to mention that the warranty provisions are applicable to the complainant's iPhone only if they are inspected by any of the authorized service centres of OP1 and have not violated any of the provisions of the Warranty.

6. This is further submitted by OP1 that it is a settled position of law that mere bald allegations are not sufficient to prove a case. The onus to prove the allegation lies on the complainant and the complaint may be directed to furnish evidence to establish it.

7. OP1 admits that originally complainant had some issues with the phone and submitted his device with OP2 on 11.09.2018. After diagnosis, they were rectified and the phone was handed over to the complainant on 18.09.2018. Again on 24.09.2018, the complainant submitted his device to OP2 who diagnosed that the device had damage and refused the service. The OP2 informed the complainant on 13 10. 2018 that as his phone was damaged, it was out of warranty and could not be serviced. The complainant refused to accept the said findings.

8. OP1 further submits that the present complaint is misconceived, *Mala fide* and the complainant has sought to take undue advantage of his own negligence by seeking protection available under consumer law. It is submitted that the liability of the manufacturer only arises when there is an inherent defect in the product. It is settled position of law that the manufacturer cannot be made liable until it is proved by adducing expert

evidence that there was a manufacturing defect in the iPhone. The warranty will not apply when the product is willfully damaged by the complainant. OP1 also submits that OP2 wanted to hand over the device to the complainant when it was inspected and diagnosed as damaged and out of warranty but complainant refused to accept the said diagnosis and to take his phone.

9. OP1 further submits that OP1's one-year, limited warranty has its own limitations and conditions to fulfil. OP1 provides either repair, replacement or refund in the respective situation as and when required. OP1 alleges that complainant deliberately tried to cover up the fact that he had damaged the device.

10. OP2 has filed the written statement but failed to file the evidence and the opportunity to file the evidence was closed on 27.04.2021. It is a settled principle of law that in the absence of evidence, the pleadings, howsoever strong they may be, cannot take the place of proof. It is for OP2 to prove his case and since he has failed to file evidence, therefore, the contents of the written statement cannot be appreciated for the purpose of his contention and allegations put forward by the complainant are deemed to be correct and have accepted by OP2.

11. The complainant filed a rejoinder reiterating his version in the complaint and denying the contentions of OP1. Both parties filed their evidence and supporting documents.

12. In support of his claim, the complainant has filed

- a. The Copy of the invoice dated 11.07.2018 of the phone, Ex. CW1/1;
- b. The Copy of the job sheet dated 11.09.2018, Ex. CW1/2;
- c. The copy of the job sheet/delivery report dated 24.09.2018, Ex. CW1/3;
- d. The copy of the police complaint dated 13.10.2018, Ex. CW1/4;
- e. The copy of the email conversation between OP and the complainant, Ex. CW1/5;
- f. The copy of the legal notice dated 12.11.2018 along with the postal receipt, Ex. CW1/6

13. OP1 has filed a Board resolution as Ex. R1 and the copy of the warranty policy as Ex. R2.

13. The Commission has carefully gone through the record, perused the documents filed by the parties and heard the oral argument.

14. The purchase of the phone is not in dispute. It is admitted case of OP1 that the complainant had deposited his iPhone with the OP2 for repair for a list of issues first time on 11.09.2018. It is also admitted by OP1 that OP2 found that there were some minor issues, they were rectified and the said device was handed back to the complainant in perfect working condition. This is also admitted by OP1 that complainant had deposited his iPhone with OP2 for repair for alleged issues again on 24.09.2018.

15. The job sheet dated 11.09.2018 shows the action taken and diagnosis remarks by the OP2 as *“the speaker replaced, the issue resolved, AST2 done, all test passed, iPhone working fine”*. The job sheet also mentions “Inward Check” and “outward Check” giving the details of the diagnosis to the device. The phone was returned on 18.09.2018 with the remark *“part replaced and resolved”* and again on 24.09.2018, the phone was given back to OP2 with complaints. The job sheet dated 24.09.2018 at the time of receiving the phone mentions the condition of the equipment as *“scratches on the device”*, underdiagnosis remark mentioned *“the device received subject to technical verification, and will be covered under warranty based on internal checking, only if no physical damage/liquid damage, bent and unauthorizedly modification, found in the device.”* Under the head of “inward check” it is mentioned in the job sheet that the USB dock, camera, speaker, display, airport/Wi-Fi/ Bluetooth / touchscreen in working condition. The delivery report dated 13.10.2018 shows under diagnosis “the outward check”, shows airport /Wi-Fi, Bluetooth, camera, display, speaker, touch screen, USB/dock as “not working” and under “action taken”, and “diagnosis remark” mentioned that *“Apple RC was found damage in the device and estimated for exchange price. iPhone not cover under warranty. Case has been declined by customer for paid service. iPhone return without repair.”* The delivery report dated 13.10.2018 establishes that when at the time the phone was given by the complainant to OP2, the same was in

working condition and when it was returned, it was in a dead and in a non-working condition. The phone was in the custody of OP2 for 20 days since 24.09.2018 and as per OP2 submission, it was sent to a repair centre in Bangalore, which further establishes that something has happened to the phone when it was in the custody of OP2 and OP1.

16. OP has also not filed any expert opinion or the opinion of any person who has examined the phone at its centre or any evidence of such person who examined the phone to show that phone was damaged when open. There is no videography or photographs has been placed on record while opening the phone. The general practice that is followed at OP centre when a complaint is received with respect to the device, that same is taken from the customer and thereafter it is examined inside the chamber, away from the view of the complainant. No evidence is filed by the OP to show that such defects have been brought to the knowledge of the complainant before accepting the phone on 24.09.2018 or at the time of opening of the phone. There is also no evidence of record to show the procedure adopted by OP1 to examine the phone is transparent. The phone was never opened in the presence of the complainant and the defects were not brought to his knowledge, rather it was opened and examined by the OPs in isolation, away from the view of the complainant and not in the presence of the complainant. This procedure shows a lack of transparency on the part of the OPs while receiving the phone and examining the same. Furthermore,

documents speak volumes about the condition of the phone when it was given to the OP2 it was in working condition and later when it was delivered to the complainant it had not even worked.

17. OP1 also failed to establish that the service was refused by OP2 as the phone was found damaged. The documents on record show that the phone was received by OP2 and the inventory was made with respect to the condition of the phone as well as the issues complained against the phone. Therefore, the stand of OP1 that the phone was refused service by OP2 is not established or proved.

18. Moreover, as per requirement of OP1 for applicability of warranty the complainant has approached the authorized service centre of OP1. Also, there is no evidence placed on record by OP1 that there is violation of any provisions of the warranty by the complainant. So, the contention of OP1, that the said phone is out of warranty is declined.

19. The issue for consideration before this commission arises that when OP2 diagnosed the defect in the phone on 24.09.2018, that too of the nature of beyond repair, then why the phone was kept on hold by OP2 till 13.10.2018 and why the complainant was not informed immediately about the same. Moreover, the phone was bought on 11.07.2018, it is strange that it has lost its warranty period within four months. During the oral arguments, it has been admitted by OP1 that the phone was sent to Bangalore and from there It was sent back to OP2, from where it returned to

complain, but in its evidence, OP1 states otherwise that the defect was diagnosed by OP2 and return was also initiated by them after refusal of service showing that phone was never been delivered to OP1, which further establishes that OP1 is trying to mislead the Commission. The stand of OP1 that the complaint was dealt with by OP2 is wrong and contrary to the document on record and thus, this Commission is convinced that OP1 is not working/ functioning in a transparent manner and shifting the burden upon OP2 and misleading the complainant as well as the commission. OP1 also failed to produce on record any document to show that the product was willfully damaged by the complainant. Contrary to this, the documents on record show that the phone was in working condition when it was handed over to OP2 and when it was returned to him it was dead. The phone was in the custody of the opposite parties during this period.

20. This establishes that OP1 is involved in unfair trade practice and is also liable for deficiency in services in providing service to the complainant. The Complainant has proved his case against OP1 and OP2. Under these circumstances, this Commission is of the view that OP1 and OP2 are jointly and severally liable for deficiency in service and unfair trade practice and are directed to refund the complete amount of the phone to the complainant i.e. Rs. 91,000/- the cost of the phone with interest @ 9% per annum from the date of filing the complaint till its actual realization by the complainant. A compensation of Rs. 15,000/- is also awarded to the complainant which

also includes the litigation cost. The OPs shall collect the phone from the complainant at the time of making the full and final payment.

21. The above-said order be complied with by the OP1 within 30 days from the date of passing of the order, failing which the total amount accrued till 30th days shall carry an interest @ 12% per annum till its actual realization by the complainant.

22. A copy of the order be given to the parties as per CPA rules and the file be consigned to the record room.

23. That will be uploaded on the website.

Pronounced on 17.07.2023.

(Ravi Kumar)
Member

(Rashmi Bansal)
Member

(S.S. Malhotra)
President